

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SAFECO INSURANCE CO. OF AMERICA, :

Plaintiff, :

-against- :

M.E.S., INC., M.C.E.S., INC., :
HIRANI ENGINEERING & LAND: :
SURVEYING, P.C., HIRANI/MES, JV,: :
GEORGE MAKHOUL, JITENDRA S.: :
HIRANI, and SARITA HIRANI, :

Defendants. :

ORDER
09-CV-3122 (ARR)(VMS)

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Scanlon, Vera M., United States Magistrate Judge:

In its Second Motion to Compel Production of Documents from All Defendants, Safeco seeks an Order compelling (1) Defendants MES and Hirani to produce any and all ASBCA claims and all other filings and entries from the dockets in those proceedings not yet produced (“the ASBCA request”); (2) Defendants MES to produce all documents referenced in its privilege log (“the wholesale MES document request”); and (3) Defendant Hirani to produce all documents referenced in its privilege log (“the wholesale Hirani document request”). Docket No. 203. The Court finds the ASBCA request moot, and denies the wholesale MES document request and the wholesale Hirani document request for the reasons stated below.

I. The ASBCA Request

The Court finds the ASBCA request moot. The Parties discussed the ASBCA request during the 12/18/2012 conference with the Court, and during that conference MES agreed to produce the ASBCA documents. Later, the Court ruled on this issue in its 2/12/2013 Order. Docket No. 249. The Court finds the ASBCA request pending in this particular motion moot.

If Safeco finds that MES does not timely produce the ASBCA documents it is obligated to produce, or that MES does not produce an adequately detailed privilege log for the balance of ASBCA documents as required by law for MES to claim privilege, Safeco may renew the ASBCA request in a new motion to compel.

II. The Wholesale Hirani Document Request

The Court denies the wholesale Hirani document request without prejudice. In brief, Safeco sought to compel Hirani to produce all of its documents without exception because it had an inadequate privilege log. During the 12/18/2013 and 1/2/2013 conferences, the Court ordered Hirani to revise its privilege log. Hirani represented to the Court that it would produce its revised log to Safeco on or before 1/4/2013.¹ Safeco has leave to renew its motion should the Hirani production continue to be inadequate.

III. The Wholesale MES Document Request

That leaves the final category of relief sought by Safeco, i.e., the wholesale MES document request. Safeco here complains generally about MES's revised privilege log, which is to say that the privilege log is allegedly so deficient that it fails to demonstrate the elements of the asserted privileges. For example, Safeco argues that MES's privilege log does not disclose all recipients of a subject communication, or the relationship that named recipients have to MES and/or its attorneys. It is on the basis of this argument – the insufficiency of MES's privilege log – that Safeco pleads that the Court order MES to disclose all of its documents without exception.

The Court denies the wholesale MES document request. During the 12/18/2012 and 1/2/2013 hearings, the Court discussed the aforementioned ASBCA documents, but beyond that,

¹ On 1/18/2013, Safeco filed a motion for contempt sanctions against Hirani, and the Court has found no mention of failure to produce this privilege log in that document. Accordingly, the Court assumes that the privilege log was timely produced. Docket No. 242-1.

there was virtually no focus on documents that Safeco was seeking from MES. Knowing that Safeco had a pending motion for broader discovery from MES, the Court inquired expressly whether there were “any categories of documents that Safeco wants from MES, from the defendants, that we have not touched on.” 1/2/2013 Hearing Tr. at 188. Safeco’s counsel stated that there were no other categories to discuss.

The motion is denied as to the wholesale MES document request which is not supported by sufficient details, although again, Safeco has leave to renew the motion in the future should MES’s production be deficient.

SO ORDERED.

Dated: Brooklyn, New York
February 12, 2013

_____/s/_____
VERA M. SCANLON
United States Magistrate Judge